

STATEMENT OF CONSIDERATION

Relating to

401 KAR 8:010 (Not Amended After Comments)

401 KAR 8:020 (Not Amended After Comments)

401 KAR 8:075 (Amended After Comments)

401 KAR 8:600 (Amended After Comments)

Energy and Environment Cabinet

Department for Environmental Protection

Division of Water

I A public hearing on 401 KAR 8:010, 8:022, 8:075, 8:510, and 8:600, scheduled for June 23, 2009, at 10:00 a.m. at 300 Fair Oaks Lane, Conference Room 301D, was canceled; however, written comments were received regarding 401 KAR 8:010, 8:022, 8:075, and 8:600 during the public comment period.

II The following person submitted written comments:

Name and Title

Affiliation

Jimmy Grimm, Chairman

Kentucky Water and Wastewater Operators' Association

Liz D. Edmondson, Staff Attorney

Kentucky Resources Council

Gary Larimore, Executive Director

Kentucky Rural Water Association

Emily Harkenrider

Legislation Research Commission

III The following people from the promulgating administrative body responded to the written comments:

Name and Title

Affiliation

Peter T. Goodmann, Assistant Director

Division of Water

Julie Roney, Drinking Water Program

Division of Water

Abby Powell, Regulations Coordinator

Division of Water

IV Summary of Comments and Responses for 401 KAR 8:010, Definitions for 401 KAR Chapter 8

(1) Subject Matter: Boil Water Advisory

(a) Comment: Gary Larimore (Kentucky Rural Water Association)

KRWA requests a justification for the variation from the federal guidance suggesting that water be boiled for one (1) minute. Kentucky requires that water systems instruct people to boil water for three (3) minutes during a boil water advisory. KRWA is concerned that this could lead to Kentucky penalizing systems that use the federal templates, which only indicate a one (1) minute boil.

(b) Response: There is no federal requirement for the length of time to boil water under a Boil Water Advisory. There is guidance from EPA, AWWA, and other organizations that is used to develop state regulatory language and procedures. The reference in 401 KAR Chapter 8 to boil water for one (1) minute under an advisory is also in 8:020 Section 2(10)(c)2. Making the change to 8:010 would be inconsistent with the standard established in 8:020.

(2) Subject Matter: Operator

(a) Comment: Liz Edmondson (Kentucky Resources Council)

The Council suggests that in addition to the changes already proposed by the Cabinet, that the Cabinet make one change to the definition of “Operator”. The Council requests that the Cabinet change the definition from “a person” to “each person” so that where facilities have more than one operator the requirements for operators will apply to *each* operator, rather than to only one of the operators at a particular facility.

(b) Response: Changing the definition to “each person involved in the operation of a drinking water treatment plant or distribution system” would include personnel that would not qualify for certification as an operator, such as administrative, maintenance, or laboratory staff. The use of “a” person would refer to any unspecified member of a group or class.

Summary of Comments and Responses for 401 KAR 8:022, Sanitary surveys

(3) Subject Matter: Correcting a deficiency

(a) Comment: Liz Edmondson (Kentucky Resources Council)

In the proposed renumbered Section 2(1) the regulation states, “If the cabinet identifies a deficiency of a public water system in a sanitary survey report that is not significant, the public water system shall correct or otherwise address the deficiency.” The Council feels that the language “or otherwise address the deficiency” is unclear and that the regulation should be amended to more precisely define what type of practices are adequate to address a deficiency without correcting it. In addition, the regulation does not state what happens when a public water system fails to correct an insignificant deficiency. The Council recommends that failure to correct an insignificant deficiency within the time allotted should bump up that deficiency into the “significant” category.

(b) Response: The Cabinet decided not to precisely define the term “address the deficiency” to allow public water systems flexibility in how a non-significant deficiency is corrected, should the deficiency not be immediately correctable. The Cabinet does not dictate how

a water system is managed, as long as compliance with the Safe Drinking Water Act and state regulations is maintained. Failure to correct a non-significant deficiency can be elevated to a significant deficiency if the deficiency is not corrected by the time the Cabinet conducts an inspection or sanitary survey.

(4) Subject Matter: Recurring pattern of violation

(a) Comment: Liz Edmondson (Kentucky Resources Council)

In the proposed renumbered Section 2(2)(a), the regulation defines a significant deficiency as one that “is part of a recurring pattern of noncompliance with the administrative regulations in 401 KAR Chapter 8.” (p.4, lines 7-8). The Council suggests that the Cabinet amend the regulation to more clearly define what a “recurring pattern” means. The Council believes that three or more violations of either the same or similar regulation, or three or more violations of different provisions within a twelve-month period would be an appropriate standard.

(b) Response: Not defining the term “recurring pattern of noncompliance” gives the Cabinet the flexibility to look at a water system’s compliance history and to take all facts and circumstances into account before making a decision to elevate the item to a significant deficiency. Repetitive conditions, as described in the comment, would result in a water system receiving a Notice of Violation that contains remedial measures for returning to compliance. Enforcement action is initiated should non-compliance continue.

Summary of Comments and Responses for 401 KAR 8:075, Consumer confidence reports

(5) Subject Matter: Delivery of consumer confidence reports

(a) Comment: Jimmy Grimm (Kentucky Water and Wastewater Operators’ Association)

Section 1(2) should be amended to read: “A copy of the annual report and certification required by 40 CFR 144.155 shall be delivered to the cabinet and the system’s customers by July 1 each year.”

(b) Response: The agency agrees and has made the change.

(6) Subject Matter: Submitting CCR and Certification by July 1

Comment: Gary Larimore (Kentucky Rural Water Association)

KRWA requests reconsideration of the requirement to submit both the CCR and certification by July 1 of each year as this is more stringent than the federal requirement. The federal language allows water systems until three months following July 1 to submit the certification.

Response: Kentucky requires that both the report and the certification be received by the cabinet by July 1 of each year. Requiring that both documents be submitted together by a single deadline streamlines the reporting process for the water system and lessens the possibility of receiving a CCR reporting violation for failure to submit the certification. Although the federal regulation provides the option of allowing three additional months for certification, the agency believes the three month gap would create inefficiency. The requirement is not a change from the previously effective regulation.

- (7) **Subject Matter: Technical Amendments**
(a) **Comment: Emily Harkenrider (Legislative Research Commission)** Ms. Harkenrider suggested several technical amendments to 401 KAR 8:075 to comply with the drafting requirements of KRS 13A.
(b) **Response:** The agency agrees and has made the suggested changes.

Summary of Comments and Responses for 401 KAR 8:600, Secondary standards

- (8) **Subject Matter: Frequency of sampling, analyzing, and reporting**
(a) **Comment: Liz Edmondson (Kentucky Resources Council)**
The proposed amendment states that the required analyzing, sampling and reporting should be done “annually, or if consumer complaints indicate the presence of one (1) or more of these contaminants.” The word “or” in this statement creates a potential uncertainty as to whether the requirements in this section attach yearly and when a consumer complains, or if the company can choose to comply with the section either annually or where relevant consumer complaints are received. To ensure that water treatment is adequate, the Council recommends that the word “or” is changed to the word “and” so that the section clearly requires, at a minimum, annual sampling, analysis, and reporting, and additional sampling, analysis, and reporting where relevant consumer complaints are received.
(b) **Response:** The agency agrees and has made the change.
- (9) **Subject Matter: Technical Amendments**
(a) **Comment: Emily Harkenrider (Legislative Research Commission)** Ms. Harkenrider suggested several technical amendments to 401 KAR 8:600 to comply with the drafting requirements of KRS 13A.
(b) **Response:** The agency agrees and has made the suggested changes.

V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was canceled; however, written comments were received. The Division of Water reviewed the comments and, as a result, is amending 401 KAR 8:075 and 8:600 as follows:

Summary of changes for 401 KAR 8:075, Consumer confidence reports

Page 1

RELATES TO

Line 6

After "224.10-110,", insert "40 C.F.R.".

Page 1

STATUTORY AUTHORITY

Line 8

After "224.10-110", delete "(2)".

Line 9

After "300f", insert a dash.

Delete "through".

After "300j-26", insert "EO 2008-507, 2008-531".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Lines 10 and 11

After "224.10-110(2) and (3)", insert "require".

Delete "authorize".

Lines 20 and 21

After "regulation requires", insert "that".

After "report and certification", insert "be delivered to".

Delete "to be received by".

After "received by the cabinet", insert "by July 1 of each year".

Delete the following:

within fourteen (14) days of delivery to the customer

Page 2

Section 1(1)

Line 3

After "141.153,", delete "and".

Page 2

Section 1(2)

Line 6

After "delivered to the cabinet", insert the following:

and the system's customers by July 1 each year.

Delete the semicolon and paragraphs (a) and (b) in their entirety.

Summary of changes for 401 KAR 8:600, Secondary standards

Page 1

STATUTORY AUTHORITY

Line 8

After "224.10-100", insert "(28)".

Lines 8 and 9

After "C.F.R. 143, 42 U.S.C.", delete "A".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 10

After "224.10-110", insert "requires".

Delete "directs".

Pages 1 and 2

NECESSITY, FUNCTION, AND CONFORMITY

Lines 21 and 1

After "or discredit the", insert "supplier".

Delete "supplies".

Page 2

NECESSITY, FUNCTION, AND CONFORMITY

Line 3

After "with maximum levels", insert "established".

Delete "set".

Page 2

Section 1(1)(a)

Lines 14 and 15

After "source of water", insert a semicolon.

Delete the period.

Page 2

Section 1(1)(b)

Line 18

After "40 C.F.R. 143.3 annually," insert "and".

Delete "or".

Page 2

Section 1(1)(b)

Line 21

After "in 40 C.F.R. 143.3", insert "; and".

Delete the period.

Pages 3 and 4

Sections 1(1)(c) and 2

Lines 1 and 3

After "distribution system.", insert "(2)".

Delete "Section 2.".

Page 4

Section 2

Line 7

After "level results in", insert "a violation".

Delete "violations".

Line 8

After "water standards or", insert "in".